

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4017 of 2007

Dated:01.03.2007

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Between:

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B. Mallikharjuna Rao and others.

...PETITIONERS

and

The Mandal Revenue Officer, Manubolu Mandal, Nellore District.

...RESPONDENT

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.4017 of 2007

ORDER:

The petitioners are statedly Ex-servicemen. They were assigned agricultural land admeasuring Acs.5.00 each in survey No.521/C situated at Kolanukuduru village of Manubolu Mandal in Nellore District. The assignment was made in 1996 for the purpose of agriculture. They approached the District Collector, Nellore, and obtained permission on 13.06.2001 for cultivating/rearing fish and fish tanks. They statedly dug fish tanks for rearing fish. The Mandal Revenue Officer (MRO), respondent herein, issued show-cause notices dated 16.03.2006 calling upon the petitioners separately to show cause as to why the assignment should not be cancelled on the ground that they allegedly failed to bring the land into cultivation. The petitioners submitted explanations. It appears that a similar notice was issued to M/s. Kanneganti Sea Foods (KSF). Thereafter, MRO passed orders in Rc.No.B/11/06, dated 12.11.2006, ordering resumption of the land from the petitioners for the alleged violation of the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity). In the said order, it is averred that the petitioners alienated the property in favour of KSF in contravention of the provisions of the Act. Aggrieved by said order dated 12.11.2006, this writ petition is filed.

It is brought to my notice that similar matters, being W.P.Nos.26860 and 26892 of 2006, were disposed of by this Court, by common order dated 03.01.2007, setting aside the impugned order

and giving liberty to MRO to take necessary action.

The learned counsel for the petitioners attacks the impugned order solely on the ground that the same is vitiated by lack of jurisdiction. In substantiation of his submission, he points out that when the show-cause notices were issued alleging that the petitioners failed to cultivate the land within the stipulated time as per terms of conditions of the assignment, the impugned order came to be issued on the ground that the petitioners allegedly contravened Section 3(2) of the Act and, therefore, a submission made that the impugned order virtually without any notice and alternatively the show-cause notices which preceded the impugned order are ineffective and improper.

The learned Government Pleader for Revenue (Assignment) submits that the petitioners have alienated the property in contravention of the Act in favour of KSF. Secondly he submits that though the petitioners obtained permission from the District Collector for converting the assigned land into fishponds, alienee of the petitioners has been using the ponds for prawn culture, which is prohibited under the terms of conditions of the assignment and the relevant Law. He, therefore, sustains the impugned order.

A perusal of the impugned order would show that resumption of the land after due cancellation of assignment was proposed only on the ground that the petitioners failed to cultivate the land within the stipulated period in condition No.2 of D-Form patta. But, curiously, resumption was ordered on the ground that the petitioners alienated the land in favour of KSF. *Ex facie*, the impugned order, therefore, suffers from an incurable defect and, therefore, it cannot be sustained. When the show-cause notices were issued on one ground, the impugned order came to be passed on another ground. It only means that the impugned order was not preceded by a proper notice calling upon the petitioners to meet the allegation. When they were called upon to meet the allegation for non-cultivation, their assignment was cancelled on the allegation of alienation. Therefore, this Court holds that the impugned order is passed without jurisdiction.

In view of the above reasons, the impugned order dated 12.11.2006 is set aside. The matter is remitted to the respondent but with a direction to issue proper show-cause notice, obtain explanation from the petitioners afresh and pass appropriate orders. This exercise may be completed within a period of eight weeks from the date of receipt of a copy of this order.

This writ petition, with the above observations, is accordingly

disposed of. No costs.

(V.V.S.RAO, J)

01st March, 2007
ghn